

OVERTIME LEAVE

OBJECTIVE

It is the Commonwealth's objective to provide a uniform policy for the payment of overtime leave, when the payment of such leave is appropriate.

I. EMPLOYEES TO WHOM POLICY APPLIES

This policy applies to positions covered under the Virginia Personnel Act (Chapter 29, Code of Virginia) including classified, and restricted employees who are non-exempt (i.e., covered by the Fair Labor Standards Act) and thereby entitled to overtime compensation for overtime hours worked. (See section II (A) of Policy 2.20, Types of Employment.)

II. PURPOSE OF OVERTIME LEAVE

- A. An employee covered by the Fair Labor Standards Act who works more than 40 hours in any workweek may elect to receive overtime leave instead of overtime compensation.
NOTE: An alternate workweek or work period may be established for hospital, law enforcement (including corrections officers and game wardens) and fire protection employees, in accordance with the provisions of the Fair Labor Standards Act. For these employees, overtime work will be compensated after the requisite workweek or work period has been actually worked.
- B. Overtime leave may be granted as an alternative to the payment of overtime compensation at the employee's election and with the consent of management.
- C. Agencies preferring to use overtime leave must provide written notification to affected employees prior to the performance of the overtime work. It is not necessary to inform employees each time they work overtime, if there is an agency policy which states when overtime leave will be granted in lieu of overtime compensation, unless employees request otherwise.

III. ACCRUAL OF OVERTIME LEAVE

- A. **Rate of overtime leave**
The rate of overtime leave is one and one-half hours of leave for every hour worked over 40 in any workweek. As noted above, agencies may adopt an alternate workweek or work period for employees in hospital, law enforcement (including corrections officers and game wardens), and fire protection positions, pursuant to the Fair Labor Standards Act.

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- B. Maximum amount of accrued overtime leave**
Agencies may establish a maximum amount of overtime leave that an employee is allowed to accrue. When an employee accrues the maximum amount of overtime leave, he or she will not be allowed to accrue additional overtime leave, but will be compensated for overtime worked past that point.
- C. Overtime leave not to exceed 240 hours**
In no instance shall an employee's overtime leave balance exceed 240 hours, unless the employee holds a non-exempt public safety, emergency or seasonal position, in which case his or her overtime leave balance shall not exceed 480 hours.
- D. Duration of overtime leave**
Overtime leave does not lapse, but is subject to a maximum accrued amount, as described above. Management may reschedule employees during the workweek or work period so that no overtime is worked.

IV. APPROVAL OF OVERTIME LEAVE

- A. Agency approval**
An employee must receive approval from his or her agency regarding the scheduling of overtime leave. Failure to obtain approval, however, will not remove the agency's obligation to compensate an eligible employee for overtime worked.
- B. Scheduling of leave**
An agency should attempt to approve leave at the time requested by the employee, but *has* discretion to approve leave for a different time if required by agency needs.

V. TREATMENT OF ACCRUED OVERTIME LEAVE UPON CHANGE OF STATUS

- A. Payment when leaving state service or moving to different agency**
 - 1. Full lump sum payment
An employee shall be paid in a lump sum for the full amount of his or her accrued overtime leave balance when the employee:
 - a. leaves state service by resignation (including resignation from layoff status), retirement, layoff, discharge, or death; or
 - b. is transferred from one state agency to another.
 - 2. Payment upon employee's death
Payment upon an employee's death shall be made to the Administrator or Executor/Executrix of the employee's estate. If there is no Administrator or Executor, payment shall go to the surviving spouse, or if none, to the

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next of kin in accordance with section 64.1-123 of the Code of Virginia.
Payment may be held for 60 days.

3. Rate of payment
Overtime leave balances must be paid at the employee's ending hourly pay rate or the employee's average hourly pay rate over the last three continuous years of employment, whichever is higher.

B. Retention of accrued overtime leave

When an employee is transferred, promoted, or demoted to another classified position within the same agency, the employee will retain his or her accrued overtime leave.

C. Impact of Military Leave on overtime leave

At the employee's option, all or part of overtime leave balances may be:

- Applied to the period of absence due to military service;
- Paid up to the allowable payment limit at the time of placement on leave without pay; and/or
- Retained until reinstatement from military leave without pay.

Note: At the employee's option, payment may be made in either: a) lump sum or b) payment on the regular payroll schedule.

VI. AUTHORITY AND INTERPRETATION

This policy is issued by the Department of Human Resource Management pursuant to the authority provided in Title 2.2 of the Code of Virginia.

The Director of the Department of Human Resource Management is responsible for official interpretation of this policy, in accordance with section 2.2-1201(13) of the Code of Virginia. Questions regarding application of this policy should be directed to the Department of Human Resource Management's Office of Agency Human Resource Services. The Department of Human Resource Management reserves the right to revise or eliminate this policy as necessary.